

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III

IN THE MATTER OF:

ORDNANCE WORKS DISPOSAL AREAS  
SITE, MORGANTOWN, WEST VIRGINIA

ROCKWELL INTERNATIONAL  
CORPORATION; OLIN CORPORATION;  
GENERAL ELECTRIC COMPANY; and  
MORGANTOWN INDUSTRIAL PARK  
ASSOCIATES, Limited Partnership;

Respondents

Proceeding Under Section 106 of  
the Comprehensive Environmental  
Response, Compensation, and  
Liability Act of 1980, 42 U.S.C.  
§ 9606, as amended by the Super-  
fund Amendments and Reauthoriza-  
tion Act of 1986

Docket No.

III-90-27-DC

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ADMINISTRATIVE ORDER

FOR REMEDIAL DESIGN AND REMEDIAL ACTION:

OPERABLE UNIT NO. 1

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IN THE MATTER OF:

**ROCKWELL INTERNATIONAL CORPORATION; OLIN CORPORATION; GENERAL ELECTRIC COMPANY; and MORGANTOWN INDUSTRIAL PARK ASSOCIATES, Limited Partnership;**

**Docket No.**

**III-90-27-DC**

## ADMINISTRATIVE ORDER

## **I. JURISDICTION**

A. This Administrative Order ["Order"] is issued pursuant to the authority vested in the President of the United States by section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606, as amended ["CERCLA"], and delegated to the Administrator of EPA by

Executive Order No. 12580 [52 Fed. Reg. 2923 (January 29, 1987)], and further delegated to the Regional Administrators by EPA Delegation No. 14-14-B (September 13, 1987).

B. Prior notice of issuance of this Order has been given to the State of West Virginia pursuant to section 106(a) of CERCLA.

## II. PARTIES BOUND

A. This Order is issued to Rockwell International Corporation; Olin Corporation; General Electric Company; and Morgantown Industrial Park Associates, Limited Partnership [collectively "Respondents"].

B. This Order shall apply to and be binding upon the Respondents and their successors and assigns.

C. All obligations imposed by this Order are joint and several. The failure by one or more of the Respondents to comply with all or any part of this Order shall not in any way excuse or justify noncompliance by any other Respondent.

D. No change in ownership of any property covered by this Order, or in corporate or partnership status of any Respondent, shall in any way alter, diminish, or otherwise affect Respondents' obligations and responsibilities under this Order.

E. (1) In the event of a change in ownership or control of any of the property covered by this Order which is owned or controlled by any Respondent, such Respondent shall:

(a) notify EPA, in writing at least thirty (30) days in advance of the effective date of such change, of the name, address, and telephone number of the transferee in interest

of such property;

(b) provide EPA with copies of all indemnification agreement(s) executed in connection with the transfer or change within five (5) days of the effective date of such agreement(s); and

(c) provide a copy of this Order to all transferees in interest prior to execution of any agreement for transfer.

(2) In the event of any change in ownership or control of any of the property covered by this Order not owned or controlled by any Respondent, Respondent(s) learning of such change shall notify EPA, within ten (10) days of becoming aware of such change, of the change and the name, address, and telephone number of the transferee in interest of such property, if known. Respondents shall provide EPA with copies of all indemnification agreement(s) in their possession which were executed in connection with such change within five (5) days of receiving any such agreement. Respondents shall provide a copy of this Order to the transferees in interest upon becoming aware of any such change.

F. Within ten (10) days after the effective date of this Order, each Respondent that owns real property upon which Work, as defined herein, is to be performed pursuant to this Order shall record a notice of the existence of this Order on the deed for each such parcel owned by Respondent. Each such Respondent shall, within fifteen (15) days after the effective date of this Order, provide notice to the EPA Project Coordinator, as identified herein, of each such recording.

G. In the event of any change in ownership or control of any Respondent, Respondents shall notify EPA, in writing no later than thirty (30) days after such change, of the nature and effective date of such change. Respondents shall provide a copy of this Order to the successor(s) to any Respondent before any change becomes irrevocable.

H. Respondents shall provide a copy of this Order to all contractors, subcontractors, laboratories, consultants, and other persons retained to conduct or monitor any portion of the Work performed pursuant to this Order prior to execution of any agreements or contracts with such persons. Respondents shall condition all contracts and agreements with such persons on compliance with the terms of this Order. Notwithstanding the terms of such contracts or agreements, Respondents remain responsible for complying with the terms of this Order and for ensuring that their contractors, subcontractors, laboratories, consultants, and other persons retained to conduct or monitor any portion of the Work required by this Order comply with the terms of this Order.

### **III. FINDINGS OF FACT**

The following facts are a synopsis of information contained in the Administrative Record supporting issuance of this Order, which Administrative Record is incorporated by reference as if fully set forth herein:

#### **A. Description of the Morgantown Site and Relevant EPA Activities**

1. The Morgantown Site is located in Monongalia County



on the west bank of the Monongahela River approximately one mile south of the City of Morgantown, West Virginia, and is further described in a Record of Decision for the Site issued by EPA in September 1989 (appended to this Order as "Exhibit 1"). The Site is situated in and around a tract of property used as a location for the production of various chemical substances. Significant features of the Site include an industrial complex (largely abandoned) in the northern and central portions of the property and waste disposal areas, including a landfill, "scraped" area, and former lagoon area, at the southern end of the Site (see Exhibit 1).

2. Topography surrounding the Site is mountainous, dominated by the neighboring Chestnut Ridge of the Allegheny Mountain Range. Surface elevations at the Site range from 975 feet mean sea level to 1010 feet mean sea level. The Monongahela River flows to the northwest immediately adjacent to the Site at an elevation of 825 feet mean sea level. A fairly steep cliff separates the river from the waste disposal areas at the Site.

3. Ground water at the Site occurs in shallow, unconsolidated sediments in a discontinuous localized perched condition and in the deeper bedrock as a regional aquifer. Ground water flows eastward toward the Monongahela River. The City of Morgantown operates a drinking water intake on the river approximately one mile downstream from the Morgantown Site. This water intake supplies Morgantown with approximately seventy percent of its potable water.



4. The Morgantown Site has contained active chemical production facilities on a continual basis since the 1940's. Pursuant to various agreements and contracts with the United States, E.I. duPont de Nemours & Company ["DuPont"] acquired legal title to the Site in stages beginning in October 1940 and constructed chemical production facilities which it operated through 1945. DuPont conveyed title to the Site to the United States in December 1943. Between approximately 1946 and 1958, the Site was used by a succession of private companies including Heyden Chemical Corporation, Sharon Steel Corporation, and Olin-Mathieson Corporation to produce substances including ammonia, methyl alcohol, formaldehyde, hexamine, ethylene diamine, and coke. In August 1962, the United States conveyed the Site to the Morgantown Community Association, Inc., which, on the same day, conveyed the property to Morgantown Ordnance Works, Inc. Beginning in 1964, Weston Chemical Company purchased land within the industrial area of the Site to operate a chemical plant. In 1969, Weston Chemical Company was purchased by Borg-Warner Corporation, whose successor in interest today operates a chemical plant at the Site. In November 1978, Morgantown Ordnance Works, Inc. conveyed the Site to Princess Coals, Inc. Princess Coals, Inc. conveyed the property to Morgantown Industrial Park, Inc. in December 1982. In December 1983, the Site was conveyed to Morgantown Industrial Park Associates, the current property owner.

5. In January 1988, EPA completed a Remedial Investigation and Feasibility Study ["RI/FS"] conducted pursuant

to section 104 of CERCLA, 42 U.S.C. § 9604, during which approximately two hundred samples from soils, sediments, ground water, and surface water were collected from the Site and analyzed. A majority of these samples were taken in and around the waste disposal areas located at the southern end of the Site. Data collected during performance of the RI/FS revealed contamination at several locations in and around these waste disposal areas. Conditions at these locations are summarized as follows:

a. **Former Landfill.** The former landfill ["landfill"] was used for the disposal of construction debris and process wastes during periods of industrial activity. The landfill depth ranges from 16 to 20 feet. Included among the substances found at this area were arsenic; carcinogenic polynuclear aromatic hydrocarbons ["CPAHs"] including benzo(a)anthracene, benzo(k)fluoranthene, benzo(a)pyrene, indeno(1,2,3-c,d)pyrene, and dibenz(a,h)anthracene; acetone; phenol; toluene; lead; naphthalene; and copper.

b. **"Scraped" Area.** The "scraped" area, approximately one to two acres of bare soil surrounded by drainage ditches, is suspected to be a former waste disposal area. Blue and black "catalyst" pellets, yellow solid materials, oil-like stained soils, and construction debris were observed throughout this area. Chemical analyses of soils within the area revealed the presence of arsenic, naphthalene, and CPAHs including

benzo(a)anthracene, benzo(a)pyrene, benzo(k)fluoranthene, and indeno(1,2,3-c,d)pyrene.

c. **Former Lagoon Area.** Two plating-waste lagoons were historically operated at this location. The area is relatively flat and covered with a cinder-like surface layer and sparse vegetation. Substances detected at this location included chromium, copper, nickel, mercury, naphthalene, and CPAHs including benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(a)pyrene, and indeno(1,2,3-c,d)pyrene.

d. **Surface Water/Sediments.** Analytical data from surface water samples indicate that arsenic, lead, copper, chromium, zinc, mercury, and naphthalene are present in surface water at OU1. The results additionally show naphthalene and CPAHs including benzo(a)anthracene, benzo(k)fluoranthene, benzo(a)pyrene, and indeno(1,2,3-c,d)pyrene at sediment sampling locations downgradient of the scraped area and landfill.

6. In March 1988, EPA issued a Record of Decision ["ROD"] selecting a remedy for implementation at these waste areas. In November 1988, EPA opened an additional thirty day period for the responsible parties to comment on the remedy. On the basis of the comments received at the end of this period, EPA performed a Focused Feasibility Study ["FFS"] to reevaluate the remedial action alternatives considered in the March 1988 ROD and to conduct a

risk-based analysis of cleanup levels. The FFS was completed in June 1989.

7. In September 1989, EPA issued a new ROD which superseded the March 1988 ROD. The September 1989 ROD, appended to this Order as "Exhibit 1," announced the selection of a Preferred Remedial Action and a Contingency Remedial Action. The Preferred Remedial Action calls for, among other things, the following actions to be undertaken at OU1:

- (a) installation of a multi-media RCRA Subtitle C cap on the landfill and regrading/revegetation to control surface run-on and run-off;
- (b) excavation of contaminated inorganic "hot spots" exceeding risk-based cleanup levels from the lagoon and scraped areas;
- (c) onsite treatment of soils excavated from inorganic "hot spots" using solidification, and placement of non-hazardous treated material into the landfill prior to capping;
- (d) excavation of organic contaminated soils and sediments exceeding risk-based cleanup levels from the scraped area, lagoon area, and streams;
- (e) treatment of excavated soils and sediments with organic contaminants using bioremediation in a treatment bed within the associated area of contamination;
- (f) short-term environmental monitoring to ensure the effectiveness of the remedial action;

(g) ground water monitoring in the immediate vicinity of the landfill;

(h) deed restrictions to prohibit residential and industrial construction in the landfill area and residential construction in the remaining areas.

8. The Contingency Remedial Action is described in the September 1989 ROD to include the following actions:

(a) installation of a multi-media RCRA Subtitle C cap on the landfill and regrading/revegetation to control surface run-on and run-off;

(b) excavation of contaminated soils and sediments exceeding risk-based cleanup levels in the scraped area, lagoon area, and streams;

(c) on-site treatment of excavated soils and sediments using soil washing;

(d) short-term environmental monitoring to ensure the effectiveness of the remedial action;

(e) ground water monitoring in the immediate vicinity of the landfill area;

(f) deed restrictions to prohibit industrial and residential construction in the landfill area and residential construction in the remaining areas.

9. The September 1989 ROD reflects that the Preferred Remedial Action is selected for implementation at OU1 over the Contingency Remedial Action unless one or more of the following

conditions occurs:

(a) predesign studies show that treatment levels specified in the ROD cannot be achieved using bioremediation within a reasonable time frame; or

(b) responsible parties elect to design, implement, and finance the Contingency Remedial Action; or

(c) information received during the bidding process suggests that the costs of implementing the Preferred Remedial Action are significantly higher than estimated in the September 1989 ROD.

**B. Hazardous Substances Identified in the September 1989 ROD**

1. The following substances were found in the soil and in sediments at OU1 and are "hazardous substances" within the meaning of section 101(14) of CERCLA, 42 U.S.C. § 9601(14) because they are listed at 40 C.F.R. Part 302, Table 302.4:

(a) **Acetone.** Exposure to acetone through inhalation at high concentrations may produce irritation of the respiratory tract, coughing, headaches, drowsiness, loss of coordination, and coma.

(b) **Arsenic.** Arsenic is a human carcinogen, causing skin tumors when ingested and lung cancer when inhaled. Direct dermal contact can induce dermatitis. Health effects resulting from short-term oral exposure include gastrointestinal irritation, anemia, and peripheral neuropathies. Arsenic compounds are



teratogenic and have adverse reproductive effects in animals.

(c) **Benzo(k)fluoranthene.** This substance is classified by EPA as a Class B2 carcinogen and is a probable human carcinogen. Benzo(k)fluoranthene has been evaluated in dermal studies with mice, in mouse-skin initiation-promotion assays using TPA as a promoter, and in a subcutaneous injection study of mice. The substance has been shown to be an active initiator and produced injection site sarcomas in the subcutaneous study. The substance has also been shown to be mutagenic in standard mutagenicity tests.

(d) **Cadmium.** Cadmium is carcinogenic in animals exposed by inhalation and is an animal teratogen and reproductive toxin. Exposure by inhalation causes lung tumors in rats, while exposure by injection produces injection-site sarcomas. There is suggestive evidence linking cadmium with cancer of the prostate in humans.

(e) **Chromium.** Chromium, in hexavalent varieties, has been shown to be carcinogenic in rats and has been associated with increased instances of lung cancer in workers exposed to these substances. Hexavalent chromium also causes kidney damage in animals and humans. Trivalent chromium causes dermatitis in sensitive individuals.

(f) **Copper.** Copper can be toxic at high exposure



levels. Ingestion of copper in high doses can induce nausea and vomiting with possible hepatotoxicity. Persons affected with Wilson's Disease accumulate copper in the kidney, liver, brain, and corneas and are therefore at increased risk of copper toxicity.

(g) **Dibenz(a,h)anthracene.** This substance is a Class B2 carcinogen. Through various routes of exposure, the substance has been associated with increased occurrence of lung, skin, and mammary carcinomas, subcutaneous sarcomas, and pulmonary adenomas in mice.

(h) **Indeno(1,2,3-cd)pyrene.** This substance is a Class C carcinogen. Skin carcinomas and papillomas in mice have resulted from subcutaneous injection of, and skin painting with, this substance.

(i) **Lead.** Lead may produce chronic neurological, hematological, and renal health effects following prolonged exposure. Oral exposure to high lead levels can also induce overt central nervous system effects, renal tubular dysfunction, and impairment of normal heme synthesis. Lead accumulates in the body, with the majority of lead distributed to the bones.

(j) **Benzo(a)pyrene.** This substance is a Class B2 carcinogen and has caused stomach, skin, and lung tumors, lung adenomas, and local tumoring following direct injection in animals. In humans, clear association between exposure and occurrence of lung

cancer has been demonstrated. Skin exposure has resulted in benign and reversible skin lesions.

(k) **Benzo(a)anthracene.** This substance is a Class B2 carcinogen and has produced sarcomas, bladder carcinomas, and malignant skin tumors in exposed mice.

(l) **Mercury.** Mercury is acutely toxic following ingestion. Common effects include gastrointestinal irritation with possible hemorrhage and shocks, acute renal toxicity, and central nervous system toxicity. Prenatal exposure to methylmercury has been associated with brain damage. In animals, toxic effects also occur in the liver, heart, gonads, pancreas, and gastrointestinal tract.

(m) **Nickel.** Nickel compounds have been associated with cancer of the lung and nasal cavity. Inhalation exposure to certain nickel compounds causes cancer in rats. Several nickel compounds are mutagenic and can cause cell transformation. In humans, nickel and nickel compounds can cause a sensitization dermatitis.

(n) **Phenol.** Phenol is an eye, nose, and throat irritant and can cause damage to the nervous system in humans following dermal, oral, or inhalation exposure. Subchronic exposure to phenol causes liver, kidney, lung, and heart damage in experimental animals. When applied to the skin of mice, phenol appears to have some tumor-producing effects and may be a weak carcinogen.

(o) **Toluene.** Toluene can depress the human central nervous system and cause narcosis in acute exposure conditions. Toluene has been shown to be embryotoxic in experimental animals. Chronic inhalation of high concentrations of toluene causes cerebellar degeneration and an irreversible encephalopathy in animals.

(p) **Naphthalene.** Inhalation exposure to naphthalene may cause headache, loss of appetite, nausea, and kidney damage in humans. Acute hemolytic effects are reportedly caused by ingestion or inhalation of relatively large quantities of naphthalene. Optical neuritis, injuries to the cornea, and opacities of the lens may also result from inhalation exposure or ingestion.

**C. Description of Respondents**

**1. Rockwell International Corporation**

(a) On or about December 31, 1968, the Rockwell Manufacturing Company ["RMC"] acquired the assets of the Sterling Faucet Company, a West Virginia corporation, which assets included leases of certain properties at the Morgantown Site. These assets were in turn transferred to the Sterling Faucet Company, a Delaware corporation ["SFC"]. In 1973, RMC and SFC merged into Rockwell International Corporation ["RIC"].

(b) In or around 1970, RMC and/or SFC constructed

two waste lagoons at the Morgantown Site. Between approximately 1970 and 1977, employees of RMC, RIC, and/or SFC deposited into these lagoons liquid plating wastes generated at a chrome plating facility located on the eastern side of the Monongahela River and operated by RMC, RIC, and/or SFC. Disposal of plating wastes at the lagoons was discontinued in 1977.

(c) Between approximately February and November 1981, RIC undertook to clean out the abandoned lagoons. Lagoon sludges sampled at that time by RIC's contractor revealed the presence of elevated levels of chromium, copper, nickel, lead, and mercury. Between September and November 1981, approximately 4035 cubic yards of sludge were excavated from the two lagoons and the area was backfilled with soils taken from the lagoon embankments. There is no indication that the embankment soils were analyzed to determine whether hazardous substances were present in such soils prior to backfilling activities.

(d) Soil borings taken from the lagoon area during the January 1988 RI/FS conducted at the Morgantown Site show elevated levels of chromium, copper, nickel, and mercury, with at least two samples showing copper contamination at levels documented in 1981 prior to the removal of lagoon sludges. Elevated concentrations of these wastes both inside and outside estimated lagoon

boundaries suggest that wastes were spilled during the 1981 excavation and closure of the lagoons, not completely removed during the 1981 closure operations, and/or spread throughout the area during backfilling and regrading phases of the 1981 closure operation.

2. Olin Corporation

(a) The Mathieson Chemical Company began leasing manufacturing facilities within the Morgantown Site from the United States in 1951. In 1954, Mathieson Chemical Company merged with Olin Industries, Inc. to form Olin-Mathieson Corporation. In or around 1969, Olin-Mathieson Corporation changed its name to Olin Corporation.

(b) Between 1951 and 1958, Mathieson Chemical Company and/or Olin-Mathieson Corporation operations at the Morgantown Site included the manufacture of, among other substances, coke, ammonia, methanol, formaldehyde, hexamethylenetriamine, ethylene glycol, and coke oven by-products including benzol, ammonium sulphate, and light tars and oils. Ash and cinders from the coke ovens, as well as blue and black waste "catalyst pellets" used by Mathieson Chemical Company and/or Olin-Mathieson Corporation in production processes, were hauled to the landfill within OU1 of the Morgantown Site. The ash and cinders produced in the coke ovens and hauled to the landfill were likely contaminated to some degree with, among other substances, naphthalene and CPAHs including

benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-c,d)pyrene, benzo(a)pyrene, and benzo(a)anthracene.

(c) The January 1988 RI/FS documents the presence of CPAHs including benzo(a)anthracene, benzo(k)fluoranthene, benzo(a)pyrene, indeno(1,2,3-c,d)pyrene, and dibenz(a,h)anthracene at the landfill within OU1. The RI/FS additionally documents the presence of black and blue "catalyst pellets" in the "scraped area" at OU1. Analyses performed on miscellaneous solids identified within OU1 reveals that both the blue and black "catalyst pellets" consist of hazardous substances including arsenic, cadmium, chromium, lead, mercury, and selenium.

### 3. General Electric Company

(a) In or around 1969, Borg-Warner Corporation ["Borg-Warner"] purchased Weston Chemical Company ["Weston"] and began to operate chemical manufacturing plants and laboratories ["Westmar Facilities"] formerly operated by Weston at the Morgantown Site.

(b) Borg-Warner's chemical manufacturing operations at the Morgantown Site involved the use of, among other substances, phenol, acetone, and toluene. Phenol was used as a reactant and was passed through filter media at the plants. Acetone, used in various maintenance activities and to rinse small items used in the



manufacturing process, was commonly available in areas adjacent to filters and may occasionally have been rinsed into filter media. Toluene was used in some plant manufacturing activities and was passed through filter media at the plants. Filtering operations produced, among other things, filter cake containing residual amounts of the substances that were passed through them. EPA concludes based on these facts that Borg-Warner's filter cake contained hazardous substances including, among other substances, phenol, toluene, and acetone.

(c) Between approximately 1969-1970, Borg-Warner and/or Weston disposed of over 113 tons of chemically contaminated waste generated at the Westmar Facilities in the landfill at the Site, which wastes included filter cake.

(d) The January 1988 RI/FS documents the presence of acetone, phenol, and toluene at the landfill within OU1.

(e) Between approximately 1981 and 1987, the Westmar Facilities were operated by Borg-Warner Chemicals, Inc. On or about July 30, 1987, Borg-Warner dissolved Borg-Warner Chemicals, Inc. and distributed its assets to BW Specialty Chemicals, Inc. BW Specialty Chemicals, Inc. was subsequently renamed Borg-Warner Specialty Chemicals, Inc. On or about September 19, 1988, the assets of Borg-Warner Specialty Chemicals, Inc.



were acquired in a stock purchase agreement by General Electric Company ["GE"]. Pursuant to this stock purchase agreement, GE assumed the environmental liabilities of Borg-Warner Specialty Chemicals, Inc.

4. Morgantown Industrial Park Associates,  
Limited Partnership

In or around December 1983, Morgantown Industrial Park Associates, Limited Partnership, purchased the Morgantown Site from the Morgantown Industrial Park, Inc. Morgantown Industrial Park Associates, Limited Partnership, is the current owner of the Site.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

A. The Morgantown Site, including OU1, is a "facility" as defined in section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

B. "Hazardous substances," as that term is defined in section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been deposited, stored, placed, or otherwise located on and remain at OU1.

C. The hazardous substances at OU1 are being released and/or threaten to be released from OU1 into the environment, and may present an imminent and substantial endangerment to the public health or welfare or the environment.

D. Each Respondent is a "person" within the meaning of section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and liable under section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

E. EPA has determined that in order to protect the public health and welfare and the environment, action must be taken to remediate soils and sediments present within OU1, to reduce or prevent the likelihood of current and future exposure to such soils and sediments, and to reduce or prevent contaminant migration to surface waters at OU1.

#### V. DEFINITIONS

A. "Days" shall mean calendar days unless otherwise stated in this Order.

B. "Morgantown Site" or "Site" means the facility, as defined in section 101(9) of CERCLA, 42 U.S.C. § 9601(9), located in Monongalia County on the west bank of the Monongahela River approximately one mile south of the City of Morgantown, West Virginia and further described in the September 1989 ROD.

C. "Operable Unit No. 1" or "OU1" means that portion of the Morgantown Site for which remedial action was selected by EPA for implementation in the September 1989 ROD.

D. "Work" means all tasks associated with the implementation of the September 1989 ROD including, but not limited to, design, construction, operation, and maintenance of the remedy, and all other tasks to be performed by Respondents pursuant to this Order.

E. All words used in this Order which are defined in CERCLA or the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, as amended ["NCP"], shall have the meanings given to them in that statute or regulation.

**VI. WORK TO BE PERFORMED**

A. Based on the foregoing, and the Administrative Record supporting this Order, it is hereby Ordered that Respondents implement the September 1989 ROD in accordance with that document, CERCLA, the NCP, and the requirements and schedules specified in this Order. All actions and activities carried out by Respondents pursuant to this Order shall be performed in accordance with all applicable Federal and state laws and with applicable EPA regulations, requirements, and guidance documents (and any applicable amendments to such laws, regulations, requirements, and guidance documents which take effect during the pendency of this Order). Respondents shall obtain all permits and authorizations necessary for off-site Work and shall submit and complete applications and requests for any such permits or authorizations.

B. Respondents shall demonstrate their ability to complete the Work required by this Order and to pay all claims which may arise from performance of the Work required by this Order by obtaining, and presenting to EPA for approval within twenty (20) days of the effective date of this Order, the following:

1. One of the following sufficient to demonstrate ability to complete the Work:

- (a) a performance bond;
- (b) a letter of credit;
- (c) a guarantee by a third party; or
- (d) yearly internal financial information sufficient to demonstrate to EPA's satisfaction that

Respondents have the financial capacity to complete the Work required by this Order; and

2. Copies of insurance policies or, in the alternative, one of the above-described financial assurances sufficient to cover the following:

(a) Workmen's Compensation and Employer's Liability Insurance in accordance with the laws of the State of West Virginia;

(b) Comprehensive General Liability Insurance, including --

(i) Contractual Liability-- \$1 million each contract;

(ii) Bodily Injury Liability-- \$1 million each person; \$1 million each accident;

(iii) Property Damage-- \$1 million each accident;

(c) Bodily Injury Liability-- \$500,000 each person; \$1 million each accident; and

(d) Umbrella Policy in the amount of \$ 3 million which shall provide coverage in excess of the underlying coverage described above.

For each year Respondents seek to satisfy the requirements of this Paragraph by submitting internal financial information, Respondents shall submit sworn statements containing such information on the anniversary of the effective date of this Order until EPA

determines in accordance with Section XVII of this Order that all Work required pursuant to this Order has been fully performed and all performance standards have been met.

C. (1) All Work performed pursuant to this Order shall be under the direction and supervision of qualified personnel. Within fourteen (14) days of the effective date of this Order, Respondents shall notify EPA in writing of the identity and qualifications of the contractor(s), subcontractors, and supervisory personnel to be used in carrying out all Work required by this Order. Respondents shall have a continuing obligation to provide written notification to EPA of changes in contractors, subcontractors, and supervisory personnel and the retention of additional contractors, subcontractors, and supervisory personnel hired to perform Work pursuant to this Order. Such notifications shall be submitted within ten (10) days of a change in contractors, subcontractors, or supervisory personnel, or the retention of additional contractors, subcontractors, or supervisory personnel.

(2) EPA may disapprove at any time the use of any contractor, subcontractor, supervisory personnel, or other persons retained to conduct or monitor any of the Work required by this Order EPA considers to be unqualified to perform such Work, or any portion thereof. In the event of a disapproval, Respondents shall notify EPA within fourteen (14) days of receipt of such disapproval of the person, contractor, subcontractor, or supervisory personnel that will replace the one(s) EPA disapproved.

(3) Within fourteen (14) days of receipt of EPA approval

of Respondents' contractor(s), subcontractors, and/or supervisory personnel, Respondents shall enter into an agreement with such persons to perform the Work required by this Order.

(4) Neither the United States nor EPA shall be considered a party to any contract between or among Respondents and any contractors, subcontractors, or other persons retained to conduct or monitor Work required by this Order.

D. (1) Within forty-five (45) days of receipt of EPA's approval of Respondents' contractor(s), subcontractors, and/or supervisory personnel, Respondents shall submit to EPA for approval five (5) copies of a detailed Work Plan describing the manner in which Respondents shall implement the September 1989 ROD.

(2) The Work Plan shall include, but shall not be limited to, the following items:

(a) identification of methods and expeditious schedules for performance of pre-design investigations to include bench-scale or pilot-scale treatability studies and collection of additional field data;

(b) identification of methods and expeditious schedules for preparation of design plans and specifications;

(c) Quality Assurance Project Plan;

(d) Worker Health and Safety Plan;

(e) Sampling and Analysis Plan;

(f) Emergency/Contingency Plan;



- (g) Air Monitoring Plan;
- (h) Construction Quality Control Plan;
- (i) Operation and Maintenance Plan to include provisions for groundwater monitoring and bioassay monitoring of surface water and sediments as required by the September 1989 ROD;
- (j) Community Relations Plan; and
- (k) Schedules for expeditious completion of all remedial design, construction, and operation and maintenance activities.

(3) The Work Plan shall be subject to the approval procedures set forth in Section XIII of this Order. Upon approval by EPA of the Work Plan, the Work Plan, including the schedules contained therein, shall be incorporated into and become an enforceable part of this Order.

E. Respondents shall commence implementation of the EPA-approved Work Plan no later than seven (7) days after receipt of EPA approval of the Work Plan and shall design, construct, operate, and maintain the remedial action in accordance with the terms and conditions of the Work Plan and this Order.

F. Beginning thirty (30) days after the effective date of this Order, and every thirty (30) days thereafter until EPA determines in accordance with Section XVII of this Order that all Work required pursuant to this Order has been fully performed and all performance standards have been met, Respondents shall submit to EPA a progress report detailing the Work performed in the



preceding thirty (30) days. Each progress report shall include, but not be limited to, (1) a full description of the actions undertaken pursuant to this Order during the preceding thirty (30) days; (2) results of sampling and tests, analytical data, and all other information and interpretations of such information (including results, data, and other information not meeting Quality Assurance/Quality Control standards described in Section XI of this Order) gathered by Respondents in the course of complying with this Order; (3) a description of all data anticipated and activities scheduled for the succeeding thirty (30) day period; (4) a description of any problems encountered or anticipated in carrying out the terms of this Order; (5) a description of all delays and anticipated delays that might affect the schedule for completion of activities; (6) a description of all efforts taken, and to be taken, to mitigate such delays and a schedule for completion of all activities to be taken to mitigate such delays; and (7) a description of all modifications to the Work approved by EPA during the preceding thirty (30) day period. Failure to submit written reports in accordance with the requirements of this paragraph shall constitute a violation of this Order.

G. (1) Respondents shall submit to EPA for approval a plan identifying the location of waste treatment, storage, or disposal facilities which Respondents propose to use during performance of the Work required by this Order at least seven (7) days prior to any off-site shipment of any hazardous substances. Such plan must be approved in accordance with Section XIII of this Order before

Respondents may use any such facilities.

(2) Respondents shall, prior to any off-site shipment of hazardous substances from the Site to an out-of-state waste treatment, storage, or disposal facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator (as defined in Section VIII of this Order) of such shipment. The notification requirement of this Paragraph shall not apply to off-site shipments if the total volume of all such shipments will not exceed ten (10) cubic yards.

(3) The notification required in Section VI.G (2) of this Order shall be in writing and shall include, where available, the name and location of the facility to which the hazardous substances are to be shipped; the type and quantity of the hazardous substances to be shipped; the expected schedule for shipment of the hazardous substances; and the method of transportation to be used in transporting the hazardous substances. Respondents shall notify the state in which the planned receiving facility is located of major changes in the shipment plan. Major changes include, but are not limited to, a decision to ship hazardous substances to another facility within the same state, a decision to ship hazardous substances to a facility in another state, and a decision to ship hazardous substances other than hazardous substances previously identified in Respondents' notification.

H. All documents, including reports, approvals, and other correspondence submitted to EPA pursuant to this Order, shall be

directed to the EPA Project Coordinator identified pursuant to Section VIII of this Order in accordance with the requirements of that Section. A copy of all such documents shall simultaneously be submitted to the State of West Virginia at the following address:

Pam Hayes  
WV Department of Natural Resources  
Hazardous Waste Division  
1260 Greenbrier Street  
Charleston, WV 25311

I. In the event Respondents elect to design, implement, and finance the Preferred Remedial Action instead of the Contingency Remedial Action and EPA determines that treatment levels specified in the September 1989 ROD cannot be achieved using bioremediation techniques within a reasonable timeframe, Respondents shall be obligated hereby to design, implement, and finance the Contingency Remedial Action. In such event Respondents shall, within forty-five (45) days of receipt of notification from EPA, submit to EPA for approval five (5) copies of a detailed Work Plan describing the manner in which Respondents shall implement the Contingency Remedial Action. Respondents shall thereafter design, implement, and finance the Contingency Remedial Action in accordance with the schedules and requirements of an EPA-approved Work Plan and this Order.

J. In the event Respondents elect to design, implement, and finance the Preferred Remedial Action instead of the Contingency Remedial Action and EPA has approved the Work Plan in accordance with Section XIII of this Order, Respondents may not thereafter

elect to design, implement, and finance the Contingency Remedial Action absent written approval from EPA.

**VII. FAILURE TO PERFORM/PERFORMANCE EVENTS**

A. In the event of an inability or anticipated inability on the part of Respondents to perform any of the actions required by this Order in the time and manner required herein, the Respondents' Project Coordinator (as defined in Section VIII of this Order) shall notify EPA orally within twenty-four (24) hours of such event and in writing as soon as possible, but in no event more than ten (10) days after such event. Such notice shall set forth the reason(s) for, and the expected duration of, the inability to perform; the actions taken and to be taken by Respondents to avoid and mitigate the impact of such inability to perform; and the proposed schedule for completing such actions. Such notification shall not relieve Respondents of any obligation of this Order. Respondents shall take all reasonable actions to prevent and minimize any delay.

B. Respondents shall immediately notify EPA's Project Coordinator and the National Response Center [(800) 424-8802] in the event of any action or occurrence during the pendency of this Order which causes or threatens to cause a release, in addition to or different from those described in the Administrative Record supporting issuance of this Order, of hazardous substances, pollutants, or contaminants on, at, or from the Site, or which may create a danger to public health or welfare or the environment.

C. Failure of Respondents to carry out any requirement of

this Order in accordance with the terms and conditions specified herein may result in the unilateral performance of the required actions by EPA pursuant to applicable authorities, an action to recover treble damages pursuant to CERCLA, and/or the initiation of an enforcement action against Respondents to require Respondents to perform such actions, in addition to any other relief that may be available to EPA pursuant to applicable law.

D. Nothing in this Section or any other provision of this Order shall be construed so as to limit any powers EPA may have under CERCLA, the NCP, or any other law or regulation.

#### **VIII. DESIGNATED PROJECT COORDINATORS**

A. Within fifteen (15) days of the effective date of this Order, the Respondents (collectively) shall designate a Project Coordinator and shall submit the name, address, and telephone number of such person to the EPA Project Coordinator identified below. Each Project Coordinator shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between the Respondents and EPA, and all documents, including reports, approvals, and other correspondence, concerning the activities performed pursuant to this Order, shall be directed to the Project Coordinators by certified mail. The EPA Project Coordinator is:

Harry Harbold (3HW24)  
Remedial Project Manager  
U.S. Environmental Protection Agency  
841 Chesnut Building  
Philadelphia, PA 19107  
(215) 597-0517



B. EPA and the Respondents shall each have the right to change their respective Project Coordinators. Such a change shall be accomplished by notifying the other party in writing at least five (5) days prior to the change.

C. The EPA-designated Project Coordinator shall have the authority to, *inter alia*, halt, modify, conduct, or direct any tasks required by this Order and/or undertake any response actions, or portions thereof, when conditions present or may present a threat to public health or welfare or the environment as set forth in 40 C.F.R. § 300.415(b), as amended. The absence of the EPA Project Coordinator from the Site shall not be cause for the delay or stoppage of Work.

D. No informal advice or guidance from the EPA Project Coordinator shall relieve Respondents of any obligations under this Order.

#### **IX. SITE ACCESS**

A. As of the effective date of this Order, and pursuant to section 106(a) of CERCLA, 42 U.S.C. § 9606(a), each Respondent leasing, owning, or otherwise controlling property at the Morgantown Site shall provide access to EPA and the Respondents and their respective employees, agents, consultants, contractors, and other authorized representatives for the purposes of conducting any activity required by or related to this Order. Such access shall permit EPA and its employees, agents, consultants, contractors, and other designated representatives to conduct all activities described in Paragraph C of this Section.

B. To the extent that Work required by this Order must be performed on property not presently owned or controlled by any Respondent, the Respondents shall use best efforts to obtain access agreements from the present owners of such property within thirty (30) days of the effective date of this Order. At a minimum, best efforts shall include, but shall not be limited to, a certified letter from Respondents to the present owners of such property requesting access agreements fulfilling the requirements of Paragraphs A and C of this Section. In the event that the property owners refuse to provide such access or access agreements are not obtained within thirty (30) days of the effective date of this Consent Order, whichever occurs sooner, the Respondents shall immediately notify EPA, in writing, of all efforts to obtain access and the circumstances of their failure to secure access agreements. EPA may, in its discretion, thereafter assist Respondents in obtaining access.

C. EPA and its employees, agents, consultants, contractors, and other designated representatives shall have the authority to enter and freely move about all property subject to this Order at all reasonable times for the purposes of, *inter alia*, inspecting records, operating logs, and contracts related to the Morgantown Site; reviewing the progress of the Respondents in carrying out the terms of this Order; conducting such tests and taking such samples as EPA deems necessary; using a camera, sound recording, or other documentary type equipment; and verifying the data submitted to EPA by the Respondents. In addition, EPA and its



employees, agents, consultants, contractors, and other authorized representatives shall have authority to enter, at all reasonable times, all areas in which records related to the performance of the Work required by this Order are retained. The Respondents shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, in any way pertaining to Work undertaken pursuant to this Order. Nothing herein shall be interpreted as limiting the inspection or information gathering authorities of EPA under Federal law.

D. Notwithstanding any provision of this Order, EPA retains all access authorities and rights under CERCLA and any other applicable statute and regulation.

**X. SAMPLING AND DATA/DOCUMENT AVAILABILITY**

A. Respondents shall notify EPA in writing not less than fourteen (14) days in advance of any sample collection activity undertaken pursuant to this Order.

B. (1) Subject to the limitations contained Section X.B.2 of this Order, EPA and its designated representatives shall have full access to all information maintained or created by, or on behalf of, Respondents in connection with activities conducted pursuant to this Order including, but not limited to, contractual documents, sampling data, and field notes. All such information requested by EPA and maintained by Respondents and/or Respondents' contractors, agents, or assigns (and, where appropriate, information required by Section X.B.2 of this Order) shall be made

available to EPA or its designated representative within thirty (30) days of receipt of any such request.

(2) Respondents' obligation to disclose information requested by EPA pursuant to Section X.B.1 of this Order is subject to applicable privileges recognized under Federal law, provided that no sample results or analytical data shall be claimed as privileged. Where a claim of privilege is invoked as to information, Respondents shall identify such information and state the basis of any privilege claimed. In the event Respondents withhold a document as privileged, Respondents shall provide EPA with the date, title, author, and addressee/recipient of the document; a description of the contents of the document; and the identity and basis of each privilege asserted.

C. Upon reasonable notice, Respondents and/or their contractors or subcontractors shall make themselves available for such meetings, conferences, and/or inspections with EPA, or its representatives, as may be necessary for EPA to oversee the performance of Work required by this Order.

D. At the request of EPA, Respondents shall provide EPA or its designated representatives with split or duplicate samples of any material sampled in connection with the implementation of this Order and/or shall permit EPA or its authorized representative to take such split or duplicate samples of any samples taken.

E. The Respondents may assert a claim of business confidentiality covering part or all of the information or documentation requested by or provided under this Order in the manner

described in 40 C.F.R. § 2.203(b). Such an assertion shall be substantiated in accordance with 40 C.F.R. § 2.204(e)(4) at the time the assertion is made. Analytical data shall not be claimed as confidential by Respondents. Information subject to such a claim will be handled in accordance with the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no claim of business confidentiality accompanies the information or documentation when it is submitted or made available to EPA, it may be made available to the public by EPA without further notice to Respondents.

#### **XI. QUALITY ASSURANCE**

The Respondents shall use quality assurance, quality control, and chain of custody procedures in accordance with the "EPA NEIC Policies and Procedures Manual" dated May 1978, revised May, 1986, EPA Document 330/9-78-001-R and "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans," February 1983, QAMS-005/80, while conducting all sample collection and analysis activities required by this Order. In order to provide quality assurance and maintain quality control regarding all samples collected pursuant to this Order, the Respondents shall at a minimum:

(1) Use a laboratory(s) which has a documented Quality Assurance Program that complies with EPA guidance document QAMS-005/80.

(2) Ensure that EPA personnel and/or EPA authorized representatives are allowed reasonable access to the laboratory(s), records, and personnel utilized by

Respondents for analysis of samples collected pursuant to this Order.

(3) Prepare a Quality Assurance Project Plan ["QAPjP"] for the sample collection and analysis to be conducted pursuant to this Order. The QAPjP is to be submitted to the EPA Project Coordinator for review and approval prior to initiating any field investigations. The QAPjP (and Sampling Plans if prepared as separate documents) must be submitted to EPA as part of the Work Plan required by Section VI of this Order. The purpose of the QAPjP is to present, in detail, the data quality objectives, sample collection procedures, and data analysis processes and the procedures to ensure that the objectives are met. QAMS-005/80 shall be used as guidance in the preparation of the QAPjP; additional guidance may be provided by EPA.

(4) Ensure that laboratory(s) analyzing samples required by this Order shall use the methods described by, and submit deliverables delineated in, the current "Statement of Work of the EPA Contract Lab Program." If any parameter to be analyzed for is not one of the parameters for which CLP methods are available, the lab shall use methods which are EPA-approved (and which are to be described in the QAPjP).

(5) Ensure that any laboratory(s) analyzing samples pursuant to this Order demonstrates its capability to

perform analyses in compliance with CLP requirements through the analysis of Performance Evaluation ["PE"] samples prior to conducting any analysis. Analysis of PE samples may be waived by EPA if the laboratory has satisfactorily analyzed PE samples submitted by EPA or a state agency within the past six (6) months. Documentation of such PE sample analysis must be submitted to the EPA Project Coordinator for verification.

(6) Conduct an audit of the laboratory(s) that will analyze samples from the Site at some point during the time the laboratory(s) is conducting analyses (to be specified in the QAPjP). The audit will be conducted to verify analytical capability. Auditors shall conduct lab audits according to procedures available from the ESD QA Section. Audit reports must be submitted to the EPA Project Coordinator within fifteen (15) days of completion of the audit. The Respondents must report deficiencies and corrective actions to be immediately taken within twenty-four (24) hours of the time the Respondents knew or should have known of the deficiency. Corrective actions shall be immediately taken. Laboratories which are Superfund Contract Labs ["CLP Labs"] need not be audited.

(7) Conduct at least one appropriate field audit (to be described in the QAPjP) during initial sampling



activities to verify that field samplers are correctly following sampling procedures described in the quality assurance and/or sampling plans. A report of the field audit must be sent to the EPA Project Coordinator within fifteen (15) days of completion of the audit. Respondents must report serious deficiencies and corrective actions to be immediately taken within twenty-four (24) hours of the time the Respondents knew or should have known of the deficiency. Corrective actions shall be immediately taken.

(8) Provide data validation of analyses done by the laboratory(s) (to be described in the QAPjP). This data validation shall determine data usability and shall be performed in accordance with the Functional Guidelines for Data Review for data derived by CLP methods, or if another method is used, the data validation shall be performed in accordance with the QA/QC data validation criteria set forth in that method. For methods lacking QA/QC data validation protocols, Respondents must establish validation criteria such as those in Section 8 of the EPA Series Methods in 40 C.F.R. § 136. The appropriate quality assurance data validation summary reports shall be submitted, along with sample data and summary sheets, to the EPA Project Coordinator at the time final sample results are provided to EPA.



**XII. RECORD PRESERVATION**

A. Respondents shall preserve, during the pendency of this Order and for a minimum of six (6) years after its termination, all records and documents in their possession that relate in any way to implementation of this Order, despite any document retention policy to the contrary.

B. Respondents shall use their best efforts to obtain copies of all documents relating in any way to OU1 and which are in the possession of their employees, agents, accountants, contractors, or attorneys. After expiration of the six (6) year document retention period, Respondents shall notify EPA at least thirty (30) days prior to the destruction of any documents relating to OU1. Upon request by EPA and subject to Sections X.B and X.E of this Order, Respondents shall make available to EPA such records or copies of any such records.

C. Respondents shall ensure that any agreement between Respondents and any agent, contractor, consultant, or other person retained to perform or oversee Work pursuant to this Order shall explicitly require said agent, contractor, consultant, or other person to maintain and preserve, during the pendency of this Order and for a minimum of six (6) years after termination of this Order, all data, records, and documents within their respective possession or control which relate in any way to this Order or to hazardous substance management and disposal at OU1.

D. Respondents shall not destroy any records relating to this Order until notified by EPA, in accordance with this Section, that

EPA has waived its right to obtain such records from Respondents.

**XIII. PLANS AND REPORTS REQUIRING EPA APPROVAL**

A. Unless otherwise provided, Respondents shall submit all plans, reports, or other items required to be submitted to EPA for approval pursuant to this Order to the EPA Project Coordinator. In the event of approval by EPA, Respondents shall undertake all actions required by each approved document. In the event of disapproval by EPA, EPA shall notify Respondents in writing and, unless otherwise stated in the notification, Respondents shall have twenty (20) days from the receipt of a notice of disapproval to respond to and/or correct all deficiencies and resubmit the plan, report, or other item for approval. In the event EPA approves the resubmitted document, Respondents shall undertake all actions required by the approved document. Respondents shall be deemed to be in violation of this Order in the event EPA disapproves all or any portion of any plan, report, or other item resubmitted to EPA following initial disapproval by EPA.

B. In the event EPA disapproves all or a portion of any plan, report, or other item submitted to EPA following initial disapproval pursuant to Section XIII.A of this Order, EPA retains the right to amend or develop the document, to perform all or a portion of the Work required by this Order, and/or to seek reimbursement of the costs thereof from Respondents. Respondents shall implement any document amended or developed by EPA pursuant to this Paragraph. In the event EPA elects to perform a portion

of the Work required by this Order pursuant to this Paragraph, Respondents shall not be released from complying with all other requirements of this Order.

C. EPA's decisions regarding the sufficiency or acceptability of all documents and of any activities performed pursuant to this Order shall control.

D. No failure by EPA to approve, disapprove, or otherwise respond to a document submitted to EPA for approval shall be construed as an approval of such document.

#### **XIV. RESERVATION OF RIGHTS**

A. EPA reserves all rights, claims, interests, and defenses it has under CERCLA or any other law or in equity.

B. Nothing herein shall be construed to prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, to seek injunctive relief, and/or to seek the imposition of statutory penalties.

C. This Order concerns Operable Unit No. 1 of the Morgantown Site, the first of at least two operable units planned to address contamination at the Site. The Work required by this Order will not fully remediate the Site. Subsequent operable units will address contamination at the Site not addressed through this Order. EPA reserves all rights including, without limitation, the right to institute legal action against the Respondents, in connection with the performance of any response actions not addressed by this Order.

D. EPA reserves the right to disapprove of Work performed by Respondents pursuant to this Order, to require that Respondents correct and/or re-perform any and all Work disapproved by EPA, and to require that Respondents perform response actions in addition to those required by this Order.

E. EPA reserves the right to take enforcement actions, including actions for monetary penalties, for any violation of law, regulation, or of this Order. Failure to comply with this Order subjects Respondents to the assessment of civil penalties of up to \$25,000 per day and/or punitive damages in an amount up to three times the amount of any costs incurred by the United States as a result of such failure pursuant to sections 106(b) & 107(c) of CERCLA, 42 U.S.C. §§ 9606(b) & 9607(c). EPA may also undertake other actions as it may deem necessary or appropriate for any purpose including, but not limited to, actions pursuant to sections 104 and/or 106 of CERCLA, 42 U.S.C. §§ 9604 and 9606.

F. EPA reserves the right to undertake removal and/or remedial actions, including all actions required by this Order, at any time such actions are appropriate under CERCLA and the NCP and to seek reimbursement from Respondents for any costs incurred.

G. EPA reserves the right to bring an action against Respondents pursuant to section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of all response costs incurred by the United States in connection with this Order and not reimbursed by Respondents, as well as any other costs incurred by the United States in connection with response actions conducted pursuant to CERCLA at

the Site.

H. Without limitation of any other provision in this Order, EPA reserves the right to bring actions against, and/or issue orders to, Respondents pursuant to applicable authorities for any purpose including, but not limited to, performance of response actions other than those performed by Respondents at OU1.

**XV. GENERAL PROVISIONS**

A. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation not bound by this Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

B. This Order does not constitute any decision on preauthorization of funds under section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

C. Neither EPA nor the United States, by issuance of this Order, assumes any liability for any acts or omissions by Respondents, or Respondents' employees, agents, contractors, or consultants engaged to carry out any action or activity pursuant to this Order, nor shall EPA or the United States be held as a party to any contract entered into by Respondents, Respondents' employees, agents, contractors, or consultants engaged to carry



out the requirements of this Order.

D. Nothing herein shall constitute or be construed as a satisfaction or release from liability of Respondents or any other person.

**XVI. EFFECTIVE DATE AND OPPORTUNITY TO CONFER**

A. Not later than twenty (20) days from the date of issuance of this Order, Respondents may confer with EPA to discuss the scope and applicability of this Order, the findings upon which this Order are based, the appropriateness of any action or activity required to be undertaken hereby, or other issues directly relevant to issuance of this Order. Such a conference is not, and shall not be deemed to be, an adversarial hearing or part of a proceeding to challenge this Order, and no official stenographic record of such proceeding shall be kept. Any request for a conference within the prescribed timeframe shall be made to:

Andrew S. Goldman (3RC21)  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
841 Chestnut Building  
Philadelphia, PA 19107  
(215) 597-4840

B. This Order is deemed "issued" on the date it is signed by the Regional Administrator of EPA Region III. This Order shall become effective thirty (30) days following the date on which it is issued.

C. No later than two (2) days after the effective date of this Order, each Respondent shall provide notice in writing to the individual identified in Section XVI.A of this Order stating



whether each such Respondent intends to comply with the terms of this Order. Failure by any Respondent to provide such notice shall be a violation of this Order and deemed to be a decision by such Respondent not to comply with the terms of this Order.

**XVII. CERTIFICATION OF COMPLETION AND TERMINATION**

A. Respondents shall notify EPA, in writing and in accordance with the requirements of Section XVII.B of this Order, at such time when Respondents conclude that all activities required by this Order have been fully performed. The requirements of this Order shall be deemed satisfied upon Respondents' receipt of written notice from EPA that Respondents have demonstrated, to the satisfaction of EPA, that the terms of this Order have been satisfactorily completed.

B. Notice provided to EPA pursuant to Section XVII.A of this Order shall be accompanied by a written report by a registered professional engineer certifying that all Work has been completed in full satisfaction of this Order. The written report shall be accompanied by a sworn certification from the President, Vice President, Secretary, or Treasurer of each Respondent, which certification shall be in the following form:

"Except as provided below, I certify that the information contained in or accompanying this [type of submission] is true, accurate, and complete.

"As to [the/those] portion(s) of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under the penalty of law that this [type of submission] and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel

properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

"Signature: \_\_\_\_\_

"Title: \_\_\_\_\_"

C. If EPA determines that all activities have been fully performed in accordance with this Order, EPA shall so notify the Respondents. In the event EPA determines that activities have not been fully performed in accordance with the requirements of this Order, EPA will notify Respondents in writing of the activities or tasks which must be completed or undertaken to achieve compliance with this Order, together with a schedule for completing such actions.

#### **XVIII. ADMINISTRATIVE RECORD**

The Administrative Record compiled in support of this Order may be reviewed at the EPA Region III offices by contacting:

Harry Harbold (3HW24)  
Remedial Project Manager  
U.S. Environmental Protection Agency  
841 Chestnut Building  
Philadelphia, PA 19107  
(215) 597-0517

#### **XIX. LIABILITY OF THE UNITED STATES**

Neither EPA nor the United States, by issuance of this Order, assumes any liability for any acts or omissions by Respondents or

by Respondents' employees, agents, contractors, or consultants in carrying out any action or activity pursuant to this Order, nor shall EPA or the United States be held as a party to any contract entered into by Respondents, Respondents' employees, agents, contractors, or consultants in carrying out activities pursuant to this Order.

IT IS SO ORDERED.



EDWIN B. ERICKSON  
Regional Administrator  
U.S. Environmental Protection Agency  
Region III

JUN 20 1990

DATE